

unions.

Understanding the norms of the contracts as a whole requires one to note the two contrasting thoughts, which, at a glance, appear to be in conflict and even contradictory, just like the ancient god Janus. For example, these two contrasting aspects can be seen especially in Article 415.1 of the new provisions, which covers requirements for compensation of damages due to default on financial obligations. This provision stipulates that the debtor is exempt from contractual liability when presenting claims and proof because default on financial obligations in view of contractual and commercial general wisdom is not attributable to the responsibility of the debtor. Some view this as giving consideration to the aspect of individualism that underpins the autonomy of intent of the parties to the contract based on the process of forming the agreement. Among the Legislative Council members, mainly university researchers emphasized the importance of this aspect from an academic viewpoint.

On the other hand, among those holding other views, mainly practitioners, including attorneys who participated in the deliberative council, pointed out the importance of commercial general wisdom to find and emphasize the social aspect of contracts.

Have Japanese legislators been successful in reconciling these two different principles? This will undoubtedly be a significant research issue in evaluating the reform of contract law introduced here and implemented by Law Number 44 of 2017. This law will come into force within three years from June 2, 2017, the date of its promulgation.

(on January 18, 2018)

## 2. Penal Code Amendment Pertaining to Sexual Offenses

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1. On June 16, 2017, in the 193<sup>rd</sup> session of the National Diet of Japan, a

partial amendment (Act No. 72 of 2017) to the Penal Code, pertaining to sexual offenses, was adopted and it was subsequently enacted on July 13, 2017.

This amendment greatly changed the former penal regulations on sexual offenses, such as rape, and was the first significant review of sexual offenses since the establishment of the Penal Code in 1907.

In order to carry out preparatory work for the amendment, the government established the Committee for Penal Regulations on Sexual Offenses within the Ministry of Justice in October 2014, and in October 2015 the Minister of Justice consulted with the Legislative Council regarding the outline of the amendment. After undergoing the procedures of deliberations, Legislative Council voting, and reporting to the Minister of Justice, a bill for the amendment was submitted to the National Diet and was passed unanimously by both houses of the Diet.

2. The major accompanying amendments are as follows:

(1) Changes to the *actus reus*, minimum penalty, and the naming of the crime of rape (Article 177):

- The stipulation of victims of rape being limited to females was changed, and cases where men were subjected to forced sexual intercourse became heavily punishable as forcible indecency (Article 176).

- Not only the act of vaginal penetration by male genitalia, but also anal and oral sexual intercourse became heavily punishable.

- Due to these alterations, the name of the crime was changed from “rape” to “forced sexual intercourse.”

- The minimum penalty was raised from three years imprisonment to five. Furthermore, the minimum penalty in cases where the victim died or was injured as a result of rape or the like (Article 181, Section 2: Rape Causing Death or Injury) was raised from five years imprisonment to six (accompanying this revision, the crimes of gang rape and gang rape causing death or injury were abolished).

- The same change was also added for quasi-rape (Article 178, Section 2), in which a person takes advantage of or by causing another person’s loss of consciousness or inability to resist.

(2) The establishment of a new crime involving intercourse by a guardian (Article 179, Section 1) and indecency by a guardian (Article 179, Section 2):

- Cases where a guardian who has actual custody of a child takes advantage of his/her position of power and has intercourse with a child under the age of 18 are regarded as a new type of crime and are treated similarly to the crime of forced sexual intercourse.

- Cases where a guardian, takes advantage of his/her position of power and subjects a child under the age of 18 to an act of indecency are also treated similarly to the crime of forcible indecency.

(3) Amendment to the crime of rape at the scene of a robbery (Article 241):

- The stipulation of robbers being punished, particularly heavily, in cases where they also committed rape, was changed, and cases of rapists committing robbery were treated equivalently.

(4) Making all sexual offenses a crime that is prosecutable without a victim complaint:

- The stipulation that victims of rape and forced indecency were required to press charges themselves was revised, enabling criminals to be prosecuted, without victims having to press charges.

3. The government also decided to review the actual circumstances of sexual offenses and the state of enforcement of the amendment, and so forth, three years after the amendment's enactment, and to take the required measures if adopting countermeasures in line with the actual state of crimes was deemed necessary.

(on January 23, 2018)

### 3. Establishing Fair Disclosure Rules in Japan

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#### 1. Background

In the past, the timely disclosure rules of US stock exchanges were such that issuers could disclose information selectively to certain securities market professionals. Concerned that such selective disclosure